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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/444,546 11/22/99 MAIER

R 29967US1

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PM82/0817

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EXAMINER
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COHEN, C.	
ART UNIT	PAPER NUMBER

3634  
DATE MAILED:

08/17/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/444,546**

Applicant(s)  
**Maier**

Examiner  
**Curtis Cohen**

Art Unit  
**3634**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Jun 12, 2001.

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 31-33 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 31 and 33 is/are rejected.

7) ☒ Claim(s) 32 is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31 is rejected under 35 U.S.C. 102(b) as being anticipated by Szapucki et al #5,671,958. Szapucki et al teaches a sash having a header and a stile. The sash includes an opening 51 in the sash as best shown in Figure 2. A tilt latch 2 includes a top wall 8, two side walls, a curved rear wall and a front wall (the slender region directly above latch 38 and below top wall 8). The top wall overhangs the side walls, front wall and rear wall thereby defining a "flange." A protuberance 18 projects from each side wall and includes a pointed apex 66 (Fig. 7). The apex is considered pointed since the curved semicircular member defines a zenith, or pinnacle. That is, the curved member 66 has a tangential point that is higher than any other point on the curved member thereby defining a "pointed apex." Furthermore, Szapucki et al teach that it is known in the art to taper the protuberance 66 as disclosed in column 4, last 3 lines.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence 5,669,639 in view of Szapucki et al. Lawrence teaches a housing comprising a first part 32 having exterior side walls and a second part 31 having interior side walls nesting the exterior side walls of the first part. Lawrence fails to teach a protuberance extending from the exterior side walls of the first part. Szapucki et al teaches, in Figure 7, that it is known in the art to provide a protuberance 66 on the side walls of a housing. The protuberance is provide for to capture the housing within the window sash. For this reason, it would have been obvious to one having ordinary skill in the art, at the time of applicant's invention, to provide Lawrence with a protuberance as taught by Szapucki et al.

#### ***Allowable Subject Matter***

Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See the previous Office Action for the reasons for indicating allowable subject matter.

#### ***Response to Arguments***

Applicant's arguments filed June 12, 2001 have been fully considered but they are not persuasive.

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Regarding claim 31, applicant argues that the limitation "pointed apex" is not taught because the term "pointed" means "ending in a point or sharp angle." While this may be one definition, it is not the broadest interpretation of the term. The term "pointed apex" reads on the claim language for the following reason. The half cylinder 66 of Szapucki et al has a zenith or highest point. That is, there is one location along the curved surface of member 66 that is higher than any other point on the half cylinder. It is this point that the examiner is interpreting as the "pointed apex." This appears to be a clear point of contention.

As previously stated, applicant has supplied the definition of the term "pointed", however, this is not the broadest reasonable interpretation. If applicant wants the examiner to consider the definition provided, "ending in a point or sharp angle", then it is recommended that this language be inserted into the claim. Until this language is inserted into the claim, the examiner will broadly interpret the meaning of "pointed." Note, Szapucki et al teach in the last 3 lines of column 4 that it would be an obvious modification to taper the shape of member 66. Furthermore, the examiner questions whether or not the pointed apex is applicant's novel feature. It appears as if the fingers, as set forth in claim 32, are the elements to which applicant is seeking Patent coverage. If the shape of the pointed apex is a novel aspect of the invention, then one must consider whether or not it would be obvious to change the shape of Szapucki et al considering the last 3 lines of column 4.

Any inquiry concerning this communication or earlier communications from the examiner

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should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to be 'C. Cohen', written in a cursive style.

C. Cohen

August 16, 2001